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Supreme Court, U.S.
FILED

09-869 JAN 14 2010

OFFICE OF THE CLERK
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

DON BENNY ANDERSON,

Petitioner,

v.

UNITED STATES PAROLE COMMISSION,

FEDERAL BUREAU OF INVESTIGATION, AND

UNITED STATES OF AMERICA

Respondents,

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the

Ninth Circuit Case No. 09-16311

Don Benny Anderson
Counsel of Record, pro se
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P. O. Box 1156
Mattoon, Illinois 61938-1156
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Date: January 14, 2010

Introductory Statement

Government to end all cases activated "Open door doctrine". Court ordered responses via Local Rule 56 Summary Judgment. Anderson showed evidence that court had venue and jurisdiction, that he is constitutionally, statutorily, procedurally, factually and actually innocent of all federal and state charges, and Parole Commission lacked jurisdiction. Paramount in these cases is that the record of cases contains nothing that would qualify as evidence by the government under the Rules of Civil Procedure. FBI listed bogus convictions on rap sheet. Court transferred case to where no event occurred to get rid of it. Judges refused to rule on any issues listed above or in these questions.

Questions Presented

(1) Whether the miscarriage of justice exception applies in this case and did Anderson show that his case falls within the narrow gateway of cases where a fundamental miscarriage of justice has occurred.

(2) Whether this Court must use its supervisory power 1) to implement a remedy for violation of recognized rights, 2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury and 3) to deter future illegal conduct

(3) Whether all Courts failed to perform the "searching and careful" review, including statements and affidavits, required by the Supreme Court.

(4) Whether the United States Parole Commission had Article III judicial authority to impose sentence.

(5) Whether District Court and United States Court of Appeals decided any important federal question in a way that conflicts with relevant decisions of this Court.

(6) Whether judicial bias of District Court and Court of Appeals judges violation of the Canon 2A of the Code of Conduct for United States Judges and 28 U.S.C. Section 455(a), warrants disqualification.

Complete Listing of the parties to the proceeding in this Court.

Parties to the proceeding are Don Benny Anderson, Appellant and Counsel of Record, pro se. Appellee(s) are the United States Parole Commission, Federal Bureau of Investigation, and United States of America.

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January 12, 2010

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Date judgment or order sought to be reviewed was entered. The court of appeals in case No. 09-16311 entered its judgment on October 16, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). (See page 2 of Appendix Exhibit AAAA.)

Statutory provision(s), Constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case and to confer on this Court jurisdiction to review on writ of certiorari

28 U.S.C. § 455, 28 U.S.C. § 2241, 28 U.S.C. § 2243, 28 U.S.C. § 1291, 28 U.S.C. § 1406(a),U.S. Code Title 28a, Rule 41, Rule 41 (a)(1)(i), Rule 41 (b), Rule 52 Rule 52(c), Code of Conduct for United States Judges, 175 F.R.D. 363 (1996),Fed. R. App. P .41(d)(1), Fed. R. App. P. 35 & 40, Fed. R. Civ. P. 56(e)(2),Fed. R. Civ. P. 56(c), Fed. R. Civ. P. 15(a), 9th Cir. R. 23 & 40, 9th Cir. R. 27, 9th Cir. R. 27-3, Court of Appeals Rules 35, 41(a), & 56, Circuit Rule 27-10,

Title 18 § 1201, Title 18 § 2331, Title l8 § 1589, Title 18 § 1584, Title 18 § 1590, Title 18 § 1621, Title 18 § 241, Title 18 § 242, Section 455(a) of Title 28 of the United States Code, Canon 2A of the Code of Conduct for United States Judges

Constitution for the United States of America – Preamble; Article I, sec. 9; Article III; Article III, sec. 2; Article V; First Amendment; Second Amendment; Fourth Amendment; Fifth Amendment; Sixth Amendment; Eighth Amendment; Ninth Amendment; Tenth Amendment; Thirteenth Amendment; Fourteenth Amendment.

STATEMENT OF THE CASE

According to records, Anderson had filed a motion, IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, naming the UNITED STATES PAROLE COMMISSION as Respondent, case #2:08-cv-01239-RCJ-LRL on September 17, 2008, stating that "the sole issue is whether United States Parole Commission had Article III judicial authority to issue sentence...sentences were for imprisonment only. District courts never ordered probation or supervised release or other conditions nor delegated that authority. Court silence on above doesn't mean that district courts delegated its authority."

On September 18, 2008, Anderson was coerced into signing the following fraudulent form under protest. Actual document can be found in EXHIBIT G of EXHIBIT AAAA.

COPY

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT ID# 2689069
CONVICTED PERSONS QUESTIONNAIRE
Date 09/18/2008 TIME 12:49 PM FBI# 199372AA6
NAME (Last, First, Middle)
ANDERSON, DON BENNY
Aliases/Nicknames and/or Maiden Name
ANDERSON, DONALD BENNIE/COMBS, BILL/
DUNN/JOE

Social Security #	Race	Sex	Height	Weight	Hair
333-32-1135	W	M	509	225	GRY

Eyes	Date of Birth	Place of Birth
BLU	12/19/40	Springfield, IL

Present Local Address (Including City and State)
8724 LITCHFIELD AVE LVN 89134

Local Phone # 396-2730
Permanent Home Address (Including City and Stat
2004 ½ S. NOBLE SPRINGFIELD, IL 62704
Phone # 217-670-0194
Scars, Marks, Tattoos, Amputations
NONE
Additional DOBs and/or Social Security Numbers
12/19/1942
Normal Occupation REAL ESTATE INVESTOR
Present Occupation REAL ESTATE INVESTOR
Employer and Address NONE
Time in County Length of Stay
24 HRS 4 DAYS
Driver's License and State Veh.Yr.
A53616240360 DL NONE

CONVICTIONS

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	NO	1983	ARSON 2 CTS	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd.
CLEARWATER, FL	30 YRS	UNK		UNK

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1986	EXTORTION	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd
ALTON, IL	12 YRS	PEKIN		2007

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1986	CONSPIRACY TO EXTORT	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd
ALTON, IL	12 YRS CONSECUTIVE	PEKIN		2007

F/GM/M	Federal	Year	Offense	Convicted under what name?
F	YES	1987	EXPLOSIVES PROP DEST	DON ANDERSON

City and State	Sentence	Institution	Served	Year Rlsd
MEMPHIS, TN	42 YRS	UNK		UNK

I understand that if I remain in the state of Nevada for a period of more than 48 hours, it is my responsibility to register with the Sheriff or Chief of Police in the county in which I reside, for ALL convictions defined in N.R.S. 179C and 179D inclusive. Any person violating the provisions of N.R.S. 179C is guilty of a misdemeanor. Any person violating the provisions of 179D is guilty of a felony. I acknowledge that all conviction information I have provided is accurate and all inclusive.

s/ DBA
INITIAL

Anderson noted on form "False Information above." Signed by DBA

YOUR ANNUAL VERIFICATION IS DUE IN N/A EVERY YEAR HEREAFTER.

S/ K. SMITH	8949	X	NCIC FL
Interviewer's Name	P#		

s/ Don B. Anderson
Registrant's Signature Date

LVMPD TSO 34 (REV. 11/06) * AUTOMATED

The FBI provided information to Las Vegas Police indicating convictions in 1986 and 1987 when Anderson had been incarcerated since 1982. Anderson was unaware of these alleged convictions until presented with the above document in September 2008. Anderson then challenged all State and Federal convictions in MOTION TO EXPEDITE AND AMEND

WRIT OF HABEAS CORPUS, and the legality of his Parole Commission sentence.

Government, to end all cases, activated "Open door doctrine". Court ordered responses via Local Rule 56 Summary Judgment. Anderson showed evidence that court had venue and jurisdiction, he is constitutionally, statutorily, procedurally, factually and actually innocent of all federal and state charges, and Parole Commission lacked jurisdiction. Paramount in these cases is that the record of cases contains nothing that would qualify as evidence by the government under the Rules of Civil Procedure. Judges refused to rule on any issues listed above or in these questions.

FBI listed bogus convictions on rap sheet; Court transferred case to the United States District Court for the Western District of Tennessee, where no case or controversies ever existed, to get rid of the case. Court in Tennessee was unable to identify case and stated "It is unclear from the petition whether Anderson challenges a federal or state conviction. Because Anderson invokes 28 U.S.C. § 2241, the Court will proceed under the assumption that Anderson challenges a federal conviction." Anderson never claimed to have a case in Tennessee and never filed any petition with that court.

Anderson stated, in APPELLANT'S MOTION FOR STAY OF THE MANDATE PENDING, PETITION FOR REHEARING EN BANC, *Rule 35. En Banc Determination, pursuant to Rule 41(a)*, KEEPS THE CASE OPEN OR REOPENS CASE FOR REVIEW VIA THIS PETITION-*The doctrine of "opening the door"*...This is a Schlup v. Delo gateway case. Exhibit_AAAA on page 7 states that "CANBY, THOMAS, AND IKUTA, Circuit Judges, have the burden of providing a copy of the probable cause statement, docket sheet, indictment, court transcripts, and a pre-sentence report showing that a trial actually

took place. Failure to provide these documents will prove that Anderson's allegations of a governmental conspiracy is true."

REASONS FOR GRANTING THE PETITION

1. The miscarriage of justice exception, *Schlup v. Delo, 513 U.S. 298 (1995,* applies in this case where Anderson's evidence showed innocence and establishes that the court cannot have confidence in any finding of guilt, *Schlup, 513 U13 U.S. at 317.* His constitutional rights were violated and the government did not dispute evidence that he is factually and actually innocent. Anderson has shown that his case falls within the narrow gateway of cases where a fundamental miscarriage of justice has occurred.

"At common law, res judicata did not attach to a court's denial of habeas relief." *McCleskey, 499 U.S., at 479.* "A renewed application could be made to every other judge or court in the realm, and each court or judge was bound to consider the question of the prisoner's right to a discharge independently, and not to be influenced by the previous decisions refusing discharge." *Ibid.*, quoting W. Church, Writ of Habeas Corpus §386, p. 570 (2d ed. 1893). In *Sanders v. United States, 373 U.S. 1 (1963),* this Court held that a habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice". In *Kuhlman, 477 U.S. 436,* the Court held that 'despite the removal of [the reference to the ends of justice] from 28 U.S.C. § 2244(b) in 1966, the miscarriage of justice exception would allow successive claims to be heard". There are limited circumstances under which the interests of the prisoner in relitigating constitutional claims held meritless on a prior petition may outweigh the countervailing interests served by according finality to the prior judgment.

To ensure that the fundamental miscarriage of justice exception would remain "rare" and would only

be applied in the "extraordinary case," while at the same time ensuring that the exception would extend relief to those who were truly deserving, this Court explicitly tied the miscarriage of justice exception to the petitioner's innocence." *Schlup.* In *Carrier, 477 U.S., at 496*, the Court stated that "the petitioner must show that the constitutional error "probably" resulted in the conviction of one who was actually innocent".

"The decision to consider an issue not raised below is discretionary, and such an issue should not be decided if it would prejudice the other party." *Moore v. Czerniak, Court of Appeals No. 04-15713 (2009).* The Supreme Court has explained that this forfeiture rule "is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide" and that "it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." *Hormel v. Helvering, 312 U.S. 552, 556 (1941).*

Continuing in their opinion re: *Moore*, the court cited In *Stuard v. Stewart, 401 F. 3d 1064 (9th Cir. 2005)*, "we squarely rejected the notion that this court could create arguments for the state that it did not raise on appeal." They also held that "we are not going to construct an argument for the state sua sponte, depriving [the defendant's] counsel of a fair chance to respond to it". "We apply that rule with some vigor against criminal defendants; we should be no less vigorous in applying it against the government." United *States v. Ziegler, 497 F.3d 890, 901 (9th Cir. 2007)*

Respondent(s) have, by refusing to challenge these facts, conceded and waived response, thereby admitting all Affidavit/Declarations are correct and stand for Truth and Fact. [Forfeiture Rule].

Fact –Anderson is victim of political kidnappings and was kidnapped in violation of Title 18 Section 1201;

Fact –Anderson is a victim of domestic terrorism in violation of Title 18 Section 2331;

Fact –Anderson was/is in forced labor in violation of Title 18 Section 1589;

Fact –Anderson was/is in involuntary servitude in violation of Title 18 Section 1584;

Fact –Anderson was/is a victim in respect of peonage, slavery involuntary servitude, of forced labor in violation of Title 18 Section 1590;

Fact –Anderson is a victim of a conspiracy against rights in violation of Title 18 Section 241;

Fact –Anderson is a victim of deprivation of rights under color of law in violation of Title 18 Section 242.

Fact –Anderson has charged and proved through matter-of-fact evidence and affidavits presented that he has been a victim of systematically established, secret, cruel, abusive and unlawful practice of federal and state organized crime and that lawyers have fostered the unlawful and aggressive criminal practices.

Fact –Anderson's judgments, convictions, sentences, custody or restraint are in violation of the Supreme Law: Constitution for the United States of America:

Constitution for the United States of America - Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I - Section 9 - Limits on Congress - The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III, Section 2, Clause 3 - The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.

Article V - The Congress whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified b y the Legislatures of three fourths of the several States or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress...

First Amendment – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Second Amendment –Being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed.

Fourth Amendment – The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment –No person shall be held to answer for any capital, or otherwise infamous crime, unless on

a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Eighth Amendment - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Thirteenth Amendment - Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fourteenth Amendment - Citizen rights not to be abridged - All persons born or naturalized in the

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

The above facts were presented to CANBY, THOMAS, and AKUTA, Circuit Judges. In spite of the Constitutional questions raised, they immediately issued the Order, filed Oct 16 2009, stating "The motion for reconsideration is denied. See 9th Cir. R 27-10. The emergency motion is denied. No further filings shall be accepted in this closed case."

2. "It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of court's supervisory power: "1) to implement a remedy for violation of recognized rights, 2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and 3) to deter future illegal conduct." *United States v. Hastings, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.Ed.1088, 1090 (9th Cir. 1991).* All three of these bases apply to Anderson's case.

"A court must not allow itself to be made an accomplice [ ] in willful disobedience of law." *McNabb v. U.S., 318 U.S. 332, 345, 63 S. Ct. 608, 615, 87 L. Ed. 819, (1943).*

The Government provided no affidavits and no authorities in its so-called Government's Response In opposition to Motion For Summary Judgment, as required of the non-moving party in opposition to that motion for summary judgment. Local Rule 7-2(b). Thus the court should grant Plaintiff's motion and

dismiss the non-moving party's motion and claims. What is relevant to this Informal Brief is that fact that the record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the Record includes numerous fraudulent government statements, there is nothing, beyond the conspiracy of the U.S. Attorney Gregory A. Brower, Chief Appellate and Assistant U.S. Attorney, Robert L Ellman and the corruption of the "fact-finder" U.S. District Judge, James C. Mahan, in denying Appellant's motion as "moot" and transferring the petition for writ of habeas corpus to Tennessee.

CANBY, THOMAS and IKURA, Circuit Judges for the Court of Appeals were so biased that they deliberately closed their eyes to the 9th Circuit precedent and failed to determine whether Anderson's petition could be amended, as show in the following: "Court's order before: Canby, Thomas, and Ikuta, Circuit Judges. A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See Nascimento v. Dummer, 508 F. 3rd 905, 908 (9th Cir. 2007)* (transfer orders are not directly appealable). Consequently, this appeal is dismissed for lack of jurisdiction." Anderson presents three compelling reasons why the petition for writ of certiorari should be granted. First, the court of appeals decision conflicts with decisions of this Court and other circuits; second, the failure to vacate the findings of fact and conclusions of law was erroneous; and third, review is important to restoring the public's confidence in the integrity of the judicial system. Brief will primarily focus on the second and third reasons, paying particular attention to the court of appeals' failure to properly assess the district judge's Order and not call into question the court's apparent partiality, but

provided, by their inaction, evidence of actual bias. As an initial matter, Anderson claims that there is a fourth compelling reason why the petition should be granted: this Court should exercise its supervisory powers over the lower courts under Sup. Ct. R. 10. See Robert L. Stern et 6 al., *Supreme Court Practice* 299 (5th ed. 1979) (the Court may grant review if the Justices "believe that proper supervision of the federal judiciary demands that the lower court be set aright"). The circumstances under which federal judges should be disqualified from hearing cases, and the appropriate remedy for their failing to do so, clearly fall within this Court's supervisory powers. *Cf. Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 810 n.21 (1987)* (the Court's exercise of supervisory authority is "especially appropriate" in an area that "concerns the functioning of the Judiciary"); *id.* ("we have not hesitated to find actual prejudice irrelevant when utilizing supervisory authority."). *See Calvaresi v. United States, 348 U.S. 961 (1955)* (granting certiorari "[i]n the interests of justice and in the exercise of the supervisory powers of this Court," and summarily "revers[ing] and remand[ing] to the District Court for retrial before a different judge" in a case where the court of appeals failed to disqualify the judge for alleged bias). This additional reason justifying review is interrelated with the other three reasons. For what is at stake in this case is not just the proper interpretation of an important statute, but the proper functioning of the federal Judiciary -- one of three branches of our government -- and the public's confidence in it. District Court and the Court of Appeals judges acted in conspiracy to alter the identity of the Respondent in this matter. Anderson has named the Respondent as United States Parole Commission while the courts persist in naming the Respondent as Federal Bureau of Investigation in order to dispose of

the issues by claiming lack of jurisdiction. Anderson's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement/custody or restraint. Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence. Anderson attacks the execution of sentence by United States Parole Commission and only cognizable under 28 U.S.C. Section 2241. (Claims can be found in AA, Exhibit D of Exhibit 1 - page 3-4.)

JUDICIAL NOTICE: Therefore, this court should sua sponte, on its own motion, not remand or deny this motion, but use its supervisory power to address all issues herein and in attached exhibits, even if not raised in district court. "Guided by considerations of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Simpson, 927 F. 2d 1088, 1090 (9th Cir. 1991).*

3. The Supreme Court has instructed and reviewing court is required to undertake a "searching and careful" review of the facts. *Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415, 416 (1971;* see also *Wawszkiewicz v. Department of Treasury, 670 F. 2d 296, 301 & n. 42 (D.C. Cir. 1981); Ethyl Corp. v. EPA, 541 F.2d l, 34-37 (D.C. Cir.)(en banc), cert.denied, 426 U.S. 941 (1976).* Appellant respectfully submits that the "searching and careful" review that Supreme Court requires has never been performed in this case. The Court is urged to examine the facts of the case with a careful and critical eye, including the statements and affidavits of Anderson. Such a review will show that government's position is completely unsupported by the evidence presented. Therefore the

court, it is ORDER for dismissal, steered away from a de novo review. Dismissal of this appeal is particularly inappropriate in this case given the need for judicial consideration of the substantial record submitted during the proceedings. Appellant should be granted a fair determination of all facts presented.

District Court and Court of Appeals have failed to address these issues, despite repeated petitions from Anderson. By their refusal, they have knowingly joined the conspiracy which has denied Anderson his constitutional rights.

4. Before release from prison, Anderson was coerced by Bureau of Prisons and the U.S. Parole Commission to sign parole papers. Anderson is not legally on federal parole since only a lawful Article III court with judicial authority can issue sentence. No court ever ordered probation or other conditions nor delegate that authority.

Under the United States Constitution, the right to impose punishment provided by law is judicial. Only a sentencing court having lawful Article III judicial authority, having been invested under the Constitution with power over "cases and controversies", can impose sentence. Bureau of Prisons or United States Parole Commission agents have no authority to sentence an offender to parole.

There is no constitutional power which allows government to waive its Duties. Constitutional duties cannot be waived because they are not principally obligations of individual defendants or citizens. The only way government can waive" a constitutional duty is by persuading two-thirds of congress and three-quarters of the fifty states to lawfully amend the constitution to revoke or modify that duty. See United States Constitution Article V.

Writ of habeas corpus may be granted where Appellant is in custody in violation of the Constitution or laws or treaties of the United States. Title 28 U.S.C. § 2241(c)(3). Anderson's petition seeking habeas corpus relief is appropriate under 28 U.S.C. § 2241 because he is challenging the fact or duration of his confinement/custody or restraint. Title 28 U.S.C. § 2241 is appropriately being used to challenge circumstances of confinement/custody or restriction to Central District of Illinois and restraint of liberties.

5. "The Government of United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).* One of the key legal principles on which Marbury relies is the notion that for every violation of a vested legal right, there must be a legal remedy. Lower courts have conspired to block all remedies.

The Supreme Court of the United States delineated the test for the availability of interlocutory appeals, called the collateral order doctrine, for United States federal courts in the case of *Lauro Lines s.r.l. v. Chasser et al., 490 U.S. 495 (1989)*, holding that under the relevant statute (28 U.S.C. § 1291) such an appeal would be permitted only if:

a. the outcome of the case would be conclusively determined by the issue;
b. the matter appealed was collateral to the merits; and
c. the matter was effectively unreviewable if immediate appeal were not allowed.

Because the district court had transferred this petition to Tennessee, even though they knew that no trial had ever taken place in that District, this matter has been made effectively unreviewable in this Circuit.

Anderson has proven collateral order doctrine proof and evidence, and provided grounds for an appeal under 28 U.S.C. Section 1291.

Court of Appeals Judges, CANBY, THOMAS, and IKUTA refused to comply with Article 1, Section 9, of the Constitution by denying habeas corpus privileges to Anderson without judicial review, resulting in violation of his Eighth Amendment rights and other constitution rights.

Any judge who does not comply with his/her oath to the Constitution wars against our Constitution for the United States of America and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. The United States Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer, 124 U.S. 200 (1888); U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1921). Cooper v. O'Conner, 99 F2d 433.*

"No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Cannon v. Commission on Judicial Qualifications, (1975) 14*

6. The right to trial by an impartial judge "is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). "[T]o perform its high function in the best way, `justice must satisfy the appearance of justice.'" *Id.* at 136 (citation omitted). "[A]ny tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968). The proper functioning of the judiciary and the public's

confidence in the integrity and impartiality of the judicial process demand that these high standards be maintained. In enacting 28 U.S.C. § 455 in 1974, Congress clearly recognized these fundamental precepts and intended to "broaden and clarify the grounds for judicial disqualification" that then existed; and to conform them with the recently adopted ABA Code of Judicial Conduct, Canon 3C. H.R. Rep. No. 93-1453, p.1, U.S. Code Cong. & Admin.News 1974, p. 6351. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859 n.7 (1988). Section 455(a) requires disqualification of a judge "in any proceeding in which his impartiality might reasonably be questioned." Section 455(b)(1) further provides in pertinent part that a judge shall disqualify himself "where he has a personal bias or prejudice concerning a party...."It is undisputed that the trial court's flagrant violations of the Code of Judicial Conduct brought into question these judges' impartiality. In this case, judges should be automatically disqualified under the statute. The evidence of actual bias by judges should not only triggered disqualification under § 455(b)(1), but provided additional evidence to justify action on an aggravated violation under § 455(a). Anderson submits that members of the public will be dismayed and puzzled by the district court and court of appeals, that while the omissions and actions of the judges seriously tainted the proceedings and called into question the integrity of the judicial process, their inaction provided evidence of actual bias. Undoubtedly, there is at least *some* evidence of actual bias. Correction of this serious error is warranted because it undermines the public confidence in the integrity of the judicial process. For according to the actions of the courts, judges appear to be free to adjudicate cases even where they harbor actual bias or prejudice, as long as they are careful to

sanitize their factual findings to eliminate any trace of that bias.

The *Liljeberg* Court required lower courts to consider three factors in fashioning a disqualification remedy: "[1] the risk of injustice to the parties in the particular case, [2] the risk that denial of relief will produce injustice in other cases, and [3] the risk of undermining the public's confidence in the judicial process." *Id.* at 863. The court's failure to take any action raises serious questions deserving this Court's review. After all, the public's confidence in the judicial process is the very purpose that Congress had in mind when it enacted § 455. While violations of the Code of Conduct affect the remedy phase of the litigation providing the public with cold comfort, especially where the court of appeals squarely held that the violations "seriously tainted the proceedings before the District Court and called into question the integrity of the judicial process." 253 F.3d at 46. The only way that such a "taint" can be effectively removed in a manner that will "best serve" Congress's command and the public interest is the imposition of a full retroactive disqualification. We are told that full retroactive disqualification "would unduly penalize plaintiffs, who were innocent and unaware of the misconduct, and would have only slight marginal deterrent effect." 253 F.3d at 116. However, in every case of retroactive disqualification, there will always be a party that would be penalized and the judges, in this case, have committed crimes warranting disqualification.

Accordingly, in the final analysis, the courts erred in their failure to exercise discretion in a fully informed manner and demonstrated evidence of actual bias by refusing to fashion remedy. But even if Judge's Orders do not technically constitute actual bias, the flagrant ethical breaches nevertheless warrant full disqualification.

District Court and Court of Appeals judges are biased and showed contempt for these Supreme Court rulings in that they allowed themselves to be influenced by previous rulings which caused Anderson to suffer fundamental miscarriage of justice.

Judges refusal to rule on issues raised by Anderson clearly reveals partiality in favor of the government violating the following: (1) Section 455(a) of Title 28 of the United States Code provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (2) Canon 2A of the Code of Conduct for United States Judges states that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." 175 F.R.D. 363, 365 (1998).

District Judge James C. Mahan in this case committed flagrant and repeated violations of the Code of Conduct for United States Judges in the Order, dated April 28, 2009, which stated the following, "Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for a writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008. IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee." Judge Mahan failed to properly rule on the evidence Anderson presented under oath that district court had venue and jurisdiction.

CANBY, THOMAS and IKUTA, Circuit Judges, joining RICO, criminal conspiracy and procedural kidnapping, knew from APPELLANT'S INFORMAL

BRIEF that U.S. Attorney Gregory A. Brower, Chief Appellant and Assistant U.S. Attorney, Robert L. Ellman and U.S. District Judge, James C. Mahan, were acting in a criminal conspiracy by allowing both district court and this court of appeals itself to be made an accomplice in willful disobedience of law, aiding and abetting organized crime, in violation of RICO laws. They knew district court had no authority to "terminate" appealable petition and make it un-appealable by committing criminal acts against Anderson, a victim of political kidnapping, who was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 241. Anderson is also a victim of deprivation of rights under color of law in violation of Title 18 Section 242 since court transferred petition for writ of habeas corpus to Tennessee, knowing the Federal Bureau of Investigation had created a fictional crime of Explosive Property Destruction in 1987, with a sentence of 42 years, appearing in Anderson's FBI rap sheet. (See Exhibit G). This was done with the full knowledge that Anderson had been incarcerated since 1982, that no actual trial took place in absentia although a fictional sentence of 42 years was created, and that the United States District Court for the Western District of Tennessee, Judge Thomas Anderson engaged in procedural kidnapping to cover up that fact. This Court of Appeals is covering up facts presented in APPELLANT'S INFORMAL BRIEF by issuing this court's ORDER, which constitutes an overt act of

procedural kidnapping in violation of the Title 18 U.S.C. Section 1201.

It is self-evident, from court's ORDER, that the court is biased and prejudiced against Appellant and has knowingly and willingly with criminal intent combined, conspired, agreed and did act in favor of criminals in the government and court only seeing its own arguments, but refused to consider the points raised in APPELLANT'S INFORMAL BRIEF and in his Legal Argument – APPELLANT'S MOTION TO RECONSIDER ORDER:

The questions presented for review by this Court can only be fully answered by examination of the facts provided in this document and its attachments in the appendix.

(1) Whether the miscarriage of justice exception applies in this case and did Anderson show that his case falls within the narrow gateway of cases where a fundamental miscarriage of justice has occurred.

(2) Whether this Court must use its supervisory power 1) to implement a remedy for violation of recognized rights, 2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury and 3) to deter future illegal conduct.

(3) Whether all Courts failed to perform the "searching and careful" review, including statements and affidavits, required by the Supreme Court.

(4) Whether the United States Parole Commission had Article III judicial authority to impose sentence.

(5) Whether United States Court of Appeals decided any important federal question in a way that conflicts with relevant decisions of this Court.

(6) Whether judicial bias of District Court and Court of Appeals judges violation of the Canon 2A of the Code of Conduct for United States Judges and 28 U.S.C. Section 455(a), warrants disqualification.

The Supreme Court has instructed and reviewing court is required to undertake a "searching and careful" review of the facts. *Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415, 416 (1971;* see also *Wawszkiewicz v. Department of Treasury, 670 F. 2d 296, 301 & n. 42 (D.C. Cir. 1981); Ethyl Corp. v. EPA, 541 F.2d 1, 34-37 (D.C. Cir.)(en banc), cert. denied, 426 U.S. 941 (1976).* Appellant respectfully submits that the "searching and careful" review that Supreme Court requires has never been performed in this case. The Court is urged to examine the facts of the case with a careful and critical eye, including the statements and affidavits of Anderson. Such a review will show that government's position is completely unsupported by the evidence presented. Therefore the court, it is ORDER for dismissal, steered away from a de novo review. Dismissal of this appeal is particularly inappropriate in this case given the need for judicial consideration of the substantial record submitted during the proceedings. Appellant should be granted a fair determination of all facts presented.

Based on the foregoing and attached exhibits, Anderson moves this Court to Order summary judgment and order maximum relief requested in motions. Government has shown no evidence opposing summary judgment, and judges' failure to address all issues raised in Anderson's appeals indicates bias and that the have waived conceded all argument raised by Anderson.

RELIEF SOUGHT

Don Benny Anderson has proven that he has been victimized by organized predominantly criminal enterprise, and is entitled to receive compensation as the result of a sustained pattern of unlawful activities, fraud, breach of fiduciary duties, breach of assumed duties, inflictions of emotional distress, invasion of privacy and criminal conspiracies which arise from the

unconscionable conduct of bar association members and fellow conspirators to cover up illegal and unconstitutional practices. The crimes mentioned are so outrageously offensive that they amount to predatory premeditated criminal acts, violations of due process, and violations of constitutional rights. (See Fifth Amendment – Just compensation; Title 28 Section 2243 "as law and justice require).

Wherefore, Anderson prays this court, based on foregoing and following, to grant relief requested. Anderson moves this Honorable Court to notify all federal and state agencies that it is issuing an Order of Notification that Anderson's intentional illegal arrests, political kidnappings without probable cause, court-manufactured convictions, illegal sentences, court-created unconstitutional judgments and manufactured FBI rap sheet and records have been declared null and void. Failure to comply with Court's expungment order will make the agency plus individuals liable for a penalty of One Million Dollars Per Day, payable to Anderson, if they do not comply. And that a notation in the record is insufficient. That there is to be no trace of them; that the expungment of Don Benny Anderson's records are ordered against all persons and agencies who maintain custody of such records, whether or not they are named as respondent(s) and the records must be turned over to Don Benny Anderson intact and unaltered within 30 days and with verification by this Court. A Certification of Compliance must be filed with this Court within 30 days of the receipt of order and said order is not in violation of Federal law. Anderson also asks this Court to order expungment of all documents, articles, and other writings concerning his arrests, convictions, and judgments from the World Wide Web. For Don Benny Anderson is a victim of political kidnapping conspiracies and respondent(s) have not provided a transcript proving any charged

crimes occurred as alleged in any charging instruments.

For Don Benny Anderson is entitled to compensation for the premeditated political kidnappings and destruction of his good name, family and business opportunities, denial of right to travel abroad and to all the states of the union, to run for public office, fly planes, vote in state and federal elections, be eligible for jury duty, own a gun, go into business immediately, and publish a book based on his experiences.

Don Benny Anderson may suffer other possible false arrest, conviction and sentence in the future on fictional charges as, in this case at bar, which has been used against him by kidnapping conspirators in United States District Courts, United States Court of Appeals and the United States Parole Commission. He will suffer future collateral consequences if false arrest records, conviction records and sentencing records remain.

Since all federal and state Courts have acted in complete absence of all jurisdiction to create fictional judgments, convictions and sentences, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require", order compensation or relief as this court would deem just and proper. See case of *Ervin McGee, Jr. v. City of Tulsa (2007)* where $14.5 million was awarded for wrongful conviction and imprisonment. Using that case as a base, Anderson believes that he is entitled, as a minimum, to receive one million dollars for each year of imprisonment and for fictional sentences, fictional judgments imposed by courts which acted in complete absence of all jurisdiction, and FBI records created and to receive $500,000 for each fictional conviction.

Affiant asked for One Billion dollars for the United States Parole Commission for false imprisonment, kidnapping him and putting on parole with no constitutional judicial authority. Prosecutor have not challenged Anderson's claims nor stated what compensation he would expect were the situations reversed and he had suffered these injuries.

Anderson is also requesting an Order stating that, if asked if he has been arrested, convicted or sentenced in the past, he can legally state "No". Because, in reality, Anderson was intentionally kidnapped, illegally and unconstitutionally arrested, convicted, sentenced, and fictional federal and state judgments created, along with fellow travelers FBI-created bogus rap sheets, to cover up nationwide organized crime, and this Honorable Court has decreed them Null and Void.

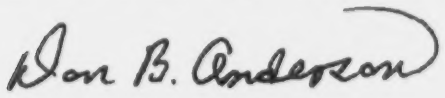
Wherefore, Anderson prays this court, based on foregoing and following, to grant relief. Relief sought in this motion was available in both district court and court of appeals. Grounds for relief were submitted, but the district court and court of appeals have failed to provide any requested relief.

JUDICIAL NOTICE: Therefore, this court should sua sponte, on its own motion, not remand to another court, for it will cause further irreparable harm or deny this motion; but use its supervisory power to address all issues herein and in attached exhibits, even if not raised in district court. "Guided by considerations of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Simpson, 927 F. 2d 1088, 1090 (9th Cir. 1991).*

CONCLUSION

For the foregoing reasons and those present in appendix by Anderson, this petition for a writ of certiorari should be granted.

Respectfully submitted.



Don Benny Anderson
(Counsel of Record)
Tel: (217) 246-4999
2500 Moultrie Avenue
P.O. Box 1156
Mattoon, IL 61938-1156

Date: January 14, 2010

CERTIFICATE OF COMPLIANCE

No. _____

DON BENNY ANDERSON,

Petitioner,

v.

UNITED STATES PAROLE COMMISSION,

FEDERAL BUREAU OF INVESTIGATION, AND

UNITED STATES OF AMERICA

Respondents,

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains fewer than 9000 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 14, 2010

Don B Anderson

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare, in compliance with 2 U.S.C. §1746, that on this 14th day of January, 2009, I have served this APPELLANT'S MOTION FOR STATE OF THE MANDATE PENDING, Rule 35, En Banc Determination, pursunt to 41 (a); PETITION FOR REHEARING *EN BANC* PURSUANT TO RULE 41(a), along with the following exhibits:

Appendix Exhibit AAAA – APPELLANT'S MOTION FOR STAY OF THE MANDATE PENDING, PETITION FOR REHEARING *EN BANC*, Rule 35. *En Banc* Determination, pursuant to Rule 41(a), KEEPS THE CASE OPEN OR REOPENS CASE FOR REVIEW VIA THIS PETITION – The doctrine of "opening the door",

Appendix Exhibit AAA – EMERGENCY MOTION UNDER 9TH CIR. R. 27-3

Appendix Exhibit AA – APPELLANT'S MOTION TO RECONSIDER

Appendix Exhibit A - Order, filed July 29, 2009

Appendix Exhibit B - Order Denying and Dismissing Habeas Petition – District Court, Western District of Tennessee

Appendix Exhibit C - DON BENNY ANDERSON'S "REPLY TO RESPONSE' TO RESPONDENT –APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION

Appendix Exhibit D - APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ ORDER AND TO STAY BRIEFING

SCHEDULE DURING PENDENCY OF MOTION

Appendix Exhibit 1 - PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS GOVERNMENT'S MOTION

Appendix Exhibit E -APPELLANT'S INFORMAL BRIEF

Appendix Exhibit F - MANDATE, filed October 26, 2009

Appendix Exhibit G -Las Vegas Metropolitan Police Convicted Persons Questionnaire –

on the following parties to proceeding, by depositing it in an parcel containing the above document properly addressed and with first class postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

United States Attorney – 3 copies
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

Don B. Anderson

Don Benny Anderson
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